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No. 00-1131

In the Supreme Court of the United States

SMURFIT-STONE CONTAINER CORPORATION,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of International Trade possesses exclusive jurisdiction over challenges to the constitutionality of the Harbor Maintenance Tax as applied to exported goods.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1–A19) is reported at 229 F.3d 1345. The opinion of the Court of International Trade (Pet. App. B1-B7) is reported at 27 F. Supp. 2d 195.

JURISDICTION

The judgment of the court of appeals was entered on October 12, 2000. The petition for a writ of certiorari was filed on January 10, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Water Resources Development Act, Pub. L. No. 99-662, 100 Stat. 4082, was enacted in 1986 to pro-

vide comprehensive improvements in the Nation's ports and harbors. To fund such improvements, Title XIV of the Act (100 Stat. 4156) established the Harbor Maintenance Revenue Act of 1986, 26 U.S.C. 4461 *et seq.*, which imposes an ad valorem tax on the use of ports by importers, exporters, domestic shippers, and passenger liners. The Harbor Maintenance Tax is imposed on "any port use" by an "importer," "exporter," or "shipper" on the basis of the value of the "commercial cargo" shipped through the port. 26 U.S.C. 4461(a)-(c). "Commercial cargo" is defined as "any cargo transported on a commercial vessel, including passengers transported for compensation or hire." 26 U.S.C. 4462(a)(3)(A). Revenue from the tax is placed in the Harbor Maintenance Trust Fund, from which amounts are withdrawn to pay for improvements in ports and harbors. 26 U.S.C. 9505.

In *United States* v. *United States Shoe Corporation*, 523 U.S. 360, 363, 370 (1998), this Court held that, because the Harbor Maintenance Tax does not qualify as a "user fee," it may not constitutionally be applied to exported goods under the Export Clause of the Constitution. The Court further concluded that the Court of International Trade properly exercised jurisdiction in that case to entertain challenges to application of the Harbor Maintenance Tax to exports under 28 U.S.C. 1581(i). 523 U.S. at 365-366. Congress has specified that all claims that come within the jurisdiction afforded by that statute are "barred unless commenced * * * within two years after the cause of action first accrues." 28 U.S.C. 2636(i).

2. In this case, petitioner seeks to recover payments of the Harbor Maintenance Tax for exported goods that were made more than two years before this action was commenced in the Court of International Trade.

Although these claims are barred by the plain language of 28 U.S.C. 2636(i), petitioner asserted that this two-year statute of limitations is unconstitutional as applied to actions seeking a refund of the unconstitutional harbor tax on exports. Pet. App. A6. Alternatively, petitioner contended that the portions of its claim barred by the two-year statute of limitations in the Court of International Trade should be transferred to the Court of Federal Claims which, petitioner asserted, would have jurisdiction over its claims under the Tucker Act, 28 U.S.C. 1491(a)(1). Pet. App. A11 n.5, B6-B7.

The Court of International Trade rejected petitioner's argument that the two-year statute of limitations in 28 U.S.C. 2636(i) is unconstitutional. Pet. App. B6. Based upon the holding of this Court in *United States Shoe* that exclusive jurisdiction over claims for the recovery of unconstitutional Harbor Maintenance Tax exactions exists in the Court of International Trade (523 U.S. at 365-366 & n.3), the court also declined to transfer petitioner's untimely claims to the Court of Federal Claims. Pet. App. B6-B7.

3. The court of appeals affirmed. Pet. App. A1-A19.[1] The court noted that this Court has long held that statutes of limitations properly apply to constitutional claims and that a "constitutional claim can become time barred just as any other claim can." Pet. App. A8 (quoting *Block* v. *North Dakota*, 461 U.S. 273, 292 (1983), and citing, *e.g.*, *McKesson Corp.* v. *Division of*

[1] In the court of appeals, the United States challenged the decision of the Court of International Trade that the two-year statute of limitations was tolled during the pendency of two motions for class certification. Pet. App. A12-A16. The Federal Circuit affirmed the lower court's ruling on that issue, and we do not seek review of that holding.

Alcoholic Beverages & Tobacco, 496 U.S. 18 (1990); *United States* v. *Dalm*, 494 U.S. 596 (1990)). The court of appeals noted that the remedy provided by Congress, and upheld by this Court in *United States Shoe*, plainly comports with due process requirements. Pet. App. A8-A10. Finally, the court rejected petitioner's argument that its untimely claims should be transferred to the Court of Federal Claims. *Id.* at A11 n.5. The court rejected petitioner's "suggestion that we disregard as dicta the Supreme Court's statements in *United States Shoe* that 'the Court of International Trade has exclusive jurisdiction over challenges to the [Harbor Maintenance Tax] under § 1581(i)(4)' and that 'the Court of Federal Claims lacks jurisdiction over the challenges to the [Harbor Maintenance Tax] currently pending there.'" Pet. App. A11 n.5 (quoting *United States Shoe*, 523 U.S. at 366 n.3).

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

1. The Federal Circuit properly concluded that the Court of International Trade possesses exclusive jurisdiction to entertain challenges to assessments of the Harbor Maintenance Tax on exported goods. Pet. App. A11 n.5. The court of appeals correctly followed the clear holding of this Court in *United States Shoe* that the Court of International Trade "has exclusive jurisdiction" over "controversies regarding the administration and enforcement of the HMT" pursuant to 28 U.S.C. 1581(i)(4). 523 U.S. at 366 & n.3. And, in refusing petitioner's request for a transfer of this case to the Court of Federal Claims, the court of appeals also

correctly followed the clear holding of *United States Shoe* that, "[b]ecause * * * the CIT has exclusive jurisdiction over challenges to the [Harbor Maintenance Tax] under § 1581(i)(4), it follows that *the Court of Federal Claims lacks jurisdiction* over the challenges to the [Harbor Maintenance Tax] currently pending there." 523 U.S. at 366 n.3 (citing 28 U.S.C. 1491(b)) (emphasis added).

Contrary to petitioner's assertion, this jurisdictional holding of the Court in *United States Shoe* is not dicta. Pet. App. A12-A13. In ascertaining, "[a]s an initial matter," its own jurisdiction over that case by first investigating whether "the CIT properly entertained jurisdiction," this Court was exercising an ordinary appellate responsibility. *United States Shoe*, 523 U.S. at 365. Although the respective jurisdictions of the Court of International Trade and the Court of Federal Claims had not been contested or addressed by the parties in *United States Shoe*, this issue was unquestionably a component of this Court's jurisdictional analysis of the case before it. See *id.* at 366 n.3. And, in reaching its jurisdictional conclusion in *United States Shoe*, the Court explicitly held that, because the Court of International Trade has "exclusive jurisdiction" over such cases, there is a "want of jurisdiction" over such cases in the Court of Federal Claims. *Ibid.* Having determined that jurisdiction over such claims is lacking in the Court of Federal Claims, this Court concluded that the parties that had erroneously brought their claims in that court were to be permitted to transfer their claims to the Court of International Trade under 28 U.S.C. 1631 "to cure want of jurisdiction" in the former court. 523 U.S. at 366 n.3.

Petitioner thus plainly errs in contending (Pet. 8-9) that the Court of International Trade and the Court of

Federal Claims may both exercise jurisdiction to entertain challenges to the Harbor Maintenance Tax. As this Court noted in *United States Shoe*, the Court of International Trade and the Court of Federal Claims do not have concurrent jurisdiction of such claims. 523 U.S. at 366 n.3. Instead, Congress expressly provided that the Court of Federal Claims has no jurisdiction to consider matters that come within the exclusive jurisdiction of the Court of International Trade. 28 U.S.C. 1491(c); *Humane Society of the United States* v. *Clinton*, 236 F.3d 1320, 1327 (Fed. Cir. 2001); see also *K Mart Corp.* v. *Cartier, Inc.*, 485 U.S. 176, 182-183 (1988).[2]

Petitioner also errs in relying (Pet. 8) on *Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974), and *Preseault* v. *ICC*, 494 U.S. 1 (1990), for the assertion that the Tucker Act provides jurisdiction to the Court of Federal Claims over challenges to the Harbor Maintenance Tax. Those cases stand for the uncontroversial proposition that Tucker Act jurisdiction exists unless Congress has withdrawn it. *Regional Rail Reorganization Act Cases*, 419 U.S. at 126; *Preseault* v. *ICC*, 494 U.S. at 12. As this Court pointed out in *United States Shoe*, however, Congress *has* specifically withdrawn Tucker Act jurisdiction for all actions that fall "within the exclusive jurisdiction of the Court of International Trade." 28 U.S.C. 1491(c) (Supp. IV 1998). See 523 U.S. at 366 n.3. It is precisely "[b]ecause * * * the CIT has exclusive jurisdiction

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[2] In establishing the jurisdiction of the Court of Federal Claims, Congress specified that "[n]othing herein shall be construed to give the United States Court of Federal Claims jurisdiction of any civil action within the exclusive jurisdiction of the Court of International Trade * * * ." 28 U.S.C. 1491(c) (Supp. IV 1998).

over challenges to the [Harbor Maintenance Tax]" that this Court held that "it follows that the Court of Federal Claims lacks jurisdiction" over such cases. 523 U.S. at 366 n.3 (citing 28 U.S.C. 1491(b)).

2. Petitioner incorrectly relies (Pet. 11) on the prior decision of the court of appeals in *Cyprus Amax Coal Co.* v. *United States*, 205 F.3d 1369 (Fed. Cir. 2000), petition for cert. pending, No. 00-360, as support for an assertion that the Court of Federal Claims has concurrent jurisdiction over claims brought to challenge the constitutionality of the Harbor Maintenance Tax under the Export Clause. That assertion ignores the fact that it was precisely claims based upon the Export Clause that this Court had before it in *United States Shoe*, and it was those very claims that this Court held were within the "exclusive jurisdiction" of the Court of International Trade. 523 U.S. at 365-366 & n.3.

The issues addressed by the court of appeals in *Cyprus Amax* and the present case are, in any event, markedly different. The question addressed in *Cyprus Amax* was whether a claim for recovery of an unconstitutional federal excise tax that was not imposed under the Harbor Maintenance Tax—a claim for which jurisdiction unquestionably existed under the Tucker Act in the Court of Federal Claims—is subject to the statutory requirements that apply generally to all suits for the recovery of internal revenue taxes under 26 U.S.C. 6511, 6532 and 7422. 205 F.3d at 1372. In addressing that issue, the court of appeals had no occasion to consider—and plainly did not purport to address or reject—the clear direction of Congress (and the clear holding of this Court in *United States Shoe*) that the Court of Federal Claims has no jurisdiction over matters that fall "within the exclusive jurisdiction of

the Court of International Trade." 28 U.S.C. 1491(c) (Supp. IV 1998).

3. Amicus New Holland North America, Inc., errs in asserting (Am. Br. 2) that a statute of limitations may not constitutionally be applied to actions that challenge the constitutionality of the Harbor Maintenance Tax. Since petitioner has not raised this contention in the petition, it is "not properly before the Court." *Radio Officers' Union* v. *NLRB*, 347 U.S. 17, 37 n.35 (1954). Moreover, this Court has long made clear that federal statutes of limitations properly apply to constitutional challenges. As this Court held in *Block* v. *North Dakota*, 461 U.S. 273, 292 (1983), a "constitutional claim can become time-barred just as any other claim can." See also *United States* v. *Dalm*, 494 U.S. 596, 602 (1990). Indeed, in *McKesson Corp.* v. *Division of Alcoholic Beverages and Tobacco*, 496 U.S. 18 (1990), this Court explicitly stated that legislatures may adopt and "enforce relatively short statutes of limitations applicable to such actions." *Id.* at 45. The court of appeals thus properly upheld the two-year statute of limitations on actions challenging the Harbor Maintenance Tax that Congress provided in 28 U.S.C. 2636(i). Pet. App. A6-A8.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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